

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSHUA WILES,

Plaintiff,

-against-

THE CITY OF NEW YORK, a municipal entity, NEW YORK
CITY POLICE OFFICER PASTULA, NEW YORK CITY
POLICE LIEUTENANT ZIELINSKI, NEW YORK CITY
POLICE SERGEANT JOHN SLAYNE and NEW YORK CITY
POLICE OFFICERS "JOHN DOES 1-10"

Defendants.

**DECLARATION OF
ANDREW LUCAS IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

13 CV 2898 (HB) (HBP)

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ANDREW LUCAS, declares under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the Office of Zachary Carter, Corporation Counsel of the City of New York, attorney for defendants. As such, I am familiar with the facts stated below. I submit this declaration in support of defendants' motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.
2. Attached as Exhibit A is Plaintiff's verified notice of claim for his September 17, 2012 arrest only.
3. Attached as Exhibit B is Plaintiff's hearing pursuant to G.M.L. 50-h held on January 17, 2013. Therein plaintiff testifies, *inter alia*, that he was ordered to disperse from the intersection of Broadway and Wall, on September 17, 2012, but remained somewhat stationary or stagnant.
4. Attached as Exhibit C is Plaintiff's initial complaint.
5. Attached as Exhibit D is the answer on behalf of the City and Officer Pastula.

6. Attached as Exhibit E is Plaintiff's amended complaint.
7. Exhibit F is Plaintiff's deposition held on March 13, 2014. Therein Plaintiff testifies that he was arrested on November 5, 2011 when he ignored dispersal orders issued to the protestors spanning the sidewalk in front of 60 Centre Street and chose to sit down on the sidewalk instead.
8. Exhibit G is video taken by Technical Assistance Response Unit (T.A.R.U.) Detective Morales on November 5, 2011. This video shows the protestors blocking the sidewalk in front of 60 Centre and protestors, including plaintiff, refusing to disperse while orders to leave are consistently read for over ten minutes.
9. Exhibit H is video from Youtube that depicts the protestors, including plaintiff, on the sidewalk in front of 60 Centre on November 5, 2011. This includes numerous dispersal orders, and ultimately, video of Plaintiff refusing to leave and sitting on the sidewalk.
10. Exhibit I is a photo published in the New York Post that depicts Plaintiff shortly after his arrest by Officer McNamara on November 5, 2011.
11. Exhibit J is an affidavit from Officer McNamara who arrested Plaintiff on November 5, 2011.
12. Exhibit K is excerpts from the deposition of Chief Anger, the ranking officer at the November 5, 2011 incident at 60 Centre Street.
13. Exhibit L is excerpts from the deposition of Lieutenant Zielinski. Lieutenant Zielinski issued numerous orders to disperse after the protestors blocked the sidewalk in front of 60 Centre Street on November 5, 2011.
14. Exhibit M is the memo book of Police Officer Pastula wherein he details, as plaintiff describes in his testimony, that Plaintiff was given an order to disperse and move along from

Broadway and Wall Street on September 17, 2012. Instead Plaintiff remained in the vicinity of the employee entrance to Wall Street and chanted with other protestors that it was his sidewalk until he was arrested.

15. Exhibit N is video taken by T.A.R.U. Detective Ellis. Therein Plaintiff can be seen and heard leading a chant of “Who’s Sidewalk?” “Our sidewalk!” with other protestors after he had been warned by Detective Pastula leading up to his arrest.

16. Exhibit O is video taken by T.A.R.U. Detective Morales. Therein Plaintiff can be seen immediately after he is ordered to disperse by Detective Pastula when he throws his arms in the air for the benefit of the press, as he testified. This video also depicts his arrest minutes later.

17. Attached as Exhibit P is excerpts of the deposition of Officer Pastula. Officer Pastula testified that Plaintiff refused to disperse after being given an order to disperse and opportunity to leave. Officer Pastula decided to arrest Plaintiff when he instead remained at the employee entrance to Wall Street leading chants of “Who’s Sidewalk?”

18. Attached as Exhibit Q are the planned events by various groups affiliated with the Occupy Wall Street Movement for September 17, 2012. They state that they are seeking to, *inter alia*, “Disrupt Wall Street... with non-violent civil disobedience,” “assemble in the streets surrounding the New York Stock Exchange in a historic act of nonviolent civil disobedience,” and “disrupt traffic throughout the Financial District by creating... intersection occupations surrounding the Stock Exchange.”

19. Attached as Exhibit R is the Police Department Detail for September 17, 2012, which quotes the names and the planned activities in Exhibit Q including the “roving intersection occupations.”

20. Exhibit S is four letters to plaintiff from the Department of Education warning him that he would be terminated if he did not satisfy his licensing requirements, as well as the letter terminating him effective July 1, 2012.

21. Exhibit T is an affidavit from another arrestee at the November 5, 2011 incident where she details that she requested Plaintiff's handcuffs be replaced, and they were.

22. Exhibit U is the decline to prosecute letters and desk appearance ticket related to Plaintiff's November 5, 2011 arrest.

23. Exhibit T is the decline to prosecute letters and desk appearance ticket related to Plaintiff's September 17, 2012 arrest.

24. Exhibit W are the letters from the Department of Education Department of Investigation rescinding and restoring Plaintiff's eligibility to work as a per diem substitute teacher in November 2012 and January 2013 respectively.

25. Exhibit X is the Substitute Teacher Pre-Employment Agreement executed by Plaintiff.

26. Exhibit Y is a copy of Chancellor's Regulation C-105.

Dated: New York, New York
 June 2, 2014

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By: /s/
 Andrew Lucas
 New York City Law Department
 Special Federal Litigation Division

TO:

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